

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 409 of 1998

with

CRIMINAL REVISION APPLICATION No.410 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ABDUL RAHIM AJUMAN SHIKH

Versus

SHIAKH MOHMAD IKBAL ABDUL RAHIM

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Appearance:

MR JV DESAI for Petitioner  
MR MA KHARADI for Respondent No. 1  
MR ANAND L SHARMA for Respondent No. 2  
MR KIRAN JANI, FOR MR RASHEED KHAN for Respondent No. 3  
MR BY MANKAD, APP for Respondent No. 4

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/09/1999

ORAL COMMON JUDGEMENT

Heard learned counsel appearing for the parties.

With the consent of learned counsel appearing for the  
parties, both these Criminal Revision Applications are

heard together and are disposed of by common judgment.

The applicant of Cri. Rev. Application No. 409 of 1998 (original complainant) has filed Criminal Case No.1035/90 against the respondent nos. 1 to 3 - original accused nos. 1 to 3 of before the learned Metropolitan Magistrate, Court No.2, Ahmedabad for the offences punishable under sections 420, 467, 468 read with sec.34 of the Indian Penal Code. After conclusion of trial, learned Metropolitan Magistrate, Ahmedabad, vide his judgment and order dated 16.4.1998 acquitted the respondent nos. 1 to 3 herein - orig. accused nos. 1 to 3. Being aggrieved by the said order, the applicant preferred above-numbered Cri.Rev. Application before this Court challenging the aforesaid impugned order.

The applicant of Cri. Rev. Application No. 410 of 1998 (original complainant) has filed Criminal Case No.1036/90 against the respondent nos. 1 to 3 - original accused nos. 1 to 3 of before the learned Metropolitan Magistrate, Court No.2, Ahmedabad for the offences punishable under sections 420, 467, 468 read with sec.34 of the Indian Penal Code. After conclusion of trial, learned Metropolitan Magistrate, Ahmedabad, vide his judgment and order dated 16.4.1998 acquitted the respondent nos. 1 to 3 herein - orig. accused nos. 1 to 3. Being aggrieved by the said order, the applicant preferred above-numbered Cri.Rev. Application before this Court challenging the aforesaid impugned order.

It has been submitted by the learned counsel appearing for the applicant that on receipt of the complaints filed by the complainant, the learned Metropolitan Magistrate passed order under Sec.156(3) of the Cr.P.Code sending the same for investigation and directing the police to investigate and submit report. Complaint filed by the applicant- complainant was against three accused i.e. respondent nos. 1 to 3, but after investigation, police filed chargesheet against two accused only i.e. accused nos. 1 & 2 - respondent nos. 1 & 2 in Revision Application and they were shown as accused in the original complaint filed before the learned Metropolitan Magistrate. It has been categorically submitted before this Court by the Mr. Kiran Jani, learned counsel appearing for respondent no.3- orig. accused no.3 that the accused no.3 was never called by the Investigating Officer nor was arrested and, therefore, formalities under sec. 169 of Cr.P.Code were not warranted. After conducting the trial against original accused nos. 1 & 2 in a summary way under Chapter XXI of Cr.P.Code, the learned Metropolitan Magistrate conducted the trial by recording plea of both the accused and conducted the trial and vide impugned

judgments and orders, acquitted both the accused of the offences with which they were charged. Both the aforesaid judgments and orders are under challenge in these Cri. Revision Applications. The State has not preferred any appeal against acquittal, but the original complainant, being aggrieved by the aforesaid judgments, has preferred these Cri. Rev. Applications.

The main grievance of the applicant- original complainant is that the procedure adopted by the learned Metropolitan Magistrate in conducting the trial in a summary way is not in accordance with the provisions of Cr.P.Code and material irregularities have been committed and the complainant is seriously prejudiced. Mr. Desai, learned counsel appearing for the applicant- original complainant has drawn attention of this Court to the fact that though there is a reference of framing of charge against the accused persons in para-1 of the judgment, but the charge was framed formally and as the Court adopted summary procedure, only plea of the accused was recorded. Mr. Desai has placed reliance on two decisions of this Court viz. (i) State of Gujarat v/s Dashirathlal Natwarlal Patel, reported in 12 GLR 648, and (ii) Babusing Jodhasing Jamdar v/s State of Gujarat, reported in 1969 GLR 998. If section 260 of the Cr.P.Code is considered which is quoted before this Court while canvassing the arguments by Mr. Desai, learned counsel appearing for the applicant, plain reading of the section is self-explanatory and needs no interpretation either in part or in its entirety. According to the scheme of sec.260 of Cr.P.Code, certain Magistrates are empowered to try a particular type of case in a summary manner. The categories of such cases are specified in the section itself. So, it can be legitimately inferred that except the categories of cases as provided under sec.260 of Cr.P.Code, the rest of the offences can be conducted by holding a regular trial. The alleged offences committed by the accused nos. 1 & 2, according to the police challan, are cognizable offences and provide R/I for more than 3 years. Under the circumstances, the learned Metropolitan Magistrate ought to have conducted the trial against the accused persons after filing of chargesheet by police like a criminal case instituted on the police report in a warrant case. In the instant case, the learned Metropolitan Magistrate has adopted wrong procedure of summary trial and, therefore, there is much force in the submission made by Mr. Desai, learned counsel appearing for the applicant that the learned Metropolitan Magistrate committed serious error in adopting procedure of summary trial instead of conducting a regular trial and, therefore, judgments and orders passed by the learned Metropolitan

Magistrate require to be quashed and set aside and matter requires to be remanded back to the learned Metropolitan Magistrate for de novo trial. Hence, aforesaid submission of Mr. Desai is accepted.

It is important to note that the Magistrate who is conducting a criminal case as a summary trial is a privileged person and it is open to him to record summary of the evidence of witnesses examined by the prosecution or the defence side. This privilege may prejudice either the accused or the complainant. It is the grievance of the complainant that the Court has not cared to record evidence by following the proper procedure and hence the case of the complainant is seriously prejudiced. As per the settled legal position, in such eventualities, de-novo trial against the accused is the only remedy available and learned counsel Mr. Desai has rightly submitted that the matter should be remanded back to the court of the learned Metropolitan Magistrate concerned for de novo trial with a direction that learned Metropolitan Magistrate should conduct the trial by following proper procedure prescribed under the provisions of the Cr.P.Code and should conduct a trial as if the case is instituted on police report as a warrant case.

Mr. Kiran Jani, learned counsel appearing for respondent no.3- original accused no.3 has submitted that respondent no.3 was named as accused no.3 in the original complaint given before the learned Metropolitan Magistrate. He has further submitted that while passing the order of remand, respondent no.3 should not be relegated and send before the learned Metropolitan Magistrate because he was not an accused in the eyes of police when chargesheet was filed. Accused No.3 has not faced the trial, but it seems that heading of original complaint shows him as accused no.3 and in the form of judgment, he is also shown as accused no.3 and even in these revision proceedings, though not warranted, he is joined as respondent no.3. Mr. Jani has further submitted that a revision by a private party viz. original complainant would lie only in case of acquittal of the accused. Thus revision application would like against the accused who is acquitted at the end of trial. Under these circumstances, since respondent no.3- accused has not faced the trial and is now shown as accused in police report, revision against him would not be maintainable and applicant should be asked to delete his name as respondent no.3 - accused no.3. In response to this submission, Mr. Desai, learned counsel appearing for the applicant has insisted that the Court should pass an appropriate order in light of the submissions and it would not be possible for the applicant to withdraw

revision application qua respondent no.3- accused no.3. Mr. Desai has tried to point out some facts from the judgment wherein the learned Metropolitan Magistrate has observed that real accused is/ was accused no.3, but the passing observations in absence of a person named as accused no.3 during the course of trial could not carry the case of the present applicant any further and revision application qua respondent no.3- accused no.3 shall have to be dismissed as the same is not maintainable.

After going through the judgment and order of the trial Court, in my view, during the course of trial against original accused nos. 1 & 2 - respondent nos. 1 & 2 herein chargesheeted by the police at the end of investigation, if Court feels that respondent no.3 original accused no.3 has not been included as an accused while filing the chargesheet wrongly and there is evidence under which he can be held guilty of the offence or offences, then he could have been joined as an accused, through police has not found him guilty for any offences enumerated in the original complaint tendered by the applicant.

Mr. Mankad, learned APP has endorsed the submission made by Mr. Jani that the revision application against respondent no.3- original accused no.3 would not be maintainable. In my view, no further discussion is required in this regard.

For the reasons recorded above, both the Criminal Revision Applications are partly allowed. Both the Criminal Revision Application qua respondent no.3 original accused no.3 are hereby dismissed. So far as respondent nos. 1 & 2- original accused nos.1 & 2 are concerned, both the Cri. Revision Applications are allowed and the impugned judgments and orders dated 16.4.1998 passed by the learned Metropolitan Magistrate, ( Court No.2), Ahmedabad in Criminal Case No. 1035/90 and 1036/90 respectively are hereby quashed and set aside and both the aforesaid Criminal Cases are hereby restored and remanded back to the learned Metropolitan Magistrate concerned at Ahmedabad for de novo trial in accordance with law and keeping in view the observations made in this order. Since the matter is very old, learned Metropolitan Magistrate concerned is directed to dispose of above-referred criminal cases as expeditiously as possible.

Rule is made absolute in both the Criminal Revision Application so far as respondent nos.1 & 2 (original accused nos. 1 & 2) are concerned whereas Rule is discharged in both the Criminal Revision Application so far as respondent no.3 ( original accused no.3) is concerned. Copy of this judgment be kept in Cri.

Revision Application No.410/98.

16.09.1999 [ C.K. BUCH, J ]

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